IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 140 OF 2003

Shri Rajaram Rau Patil. ... Petitioner

V/s.

Shri Marcel de Piedade
Braganza and others. ... Respondents.

M.S.Sonak with D.Pangam
for the petitioner.

M.S.Usgaonkar, senior counsel with
Ms.P.Kamat for respondent No.4.

P.A.Kholkar for respondent No.7.

CORAM : V.C.DAGA, J.

DATED : 11th August 2006.

P.C. :

This petition is at the instance of the original plaintiff who is challenging the order dated

20th January, 2003 passed by the Civil Judge, Senior Division, Quepem on the application moved by the petitioner/ plaintiff, whereby the plaintiff raised objections to the written statement submitted by defendant No.4 and sought direction against the said defendant to withdraw his written statement and permit him to file written statement restricted to the amended part of the plaint. By the impugned order this application of the plaintiff came to be rejected. This order is subject matter of challenge in this petition filed under Article 227 of the Constitution of India.

2. The learned counsel appearing for the petitioner submits that once the application for amendment is allowed the opposite party is only entitled to effect consequential amendment to the pleadings so as to answer the amended pleadings. However, in the garb of consequential amendment the opposite party cannot be permitted to introduce altogether a new and independent case. Reliance is placed on the judgment of the Apex Court in the case

of ***Gurdial Singh*** *v.* ***Raj Kumar Aneja*** 2002 SCC 445 and of Delhi High Court in the case of ***Jaimal Singh v. Smt.Chanan Devi,*** 1985 (1) Current Civil Cases 305 (Delhi). Thus the submission sought to be advanced by the petitioner/ plaintiff is that defendant No.4 has right to have his say only to the restricted part of amendment carried out in the plaint.

3. The learned counsel appearing for the respondent No.4/ original defendant No.4 tried to support the impugned order contending that the written statement filed by defendant No.4 does not travel beyond the scope of the amended part of the plaint pleadings. He further submits that the trial Court has exercised discretion in favour of defendant No.4 permitting to retain the written statement filed by defendant No.4 and, consequently, rejected the objections raised by the plaintiff. He, thus, submits that the impugned order needs no interference in the hands of this Court in its writ jurisdiction.

4. Having heard rival parties, it is no doubt true that defendant No.4 did not file written statement to answer the original allegations made in the plaint. Initially, suit was for declaration and permanent injunction. By subsequent amendment, the

relief of possession came to be introduced with the permission of the Court. The defendants were permitted to effect consequential amendment. Taking advantage of this opportunity, defendant No.4 appears to have filed written statement answering the entire plaint pleadings.

5. It is no doubt true that as per the law laid down by the Apex Court referred to hereinabove in the garb of consequential amendment no new pleadings can be allowed to be introduced by way of independent or primary amendment. However, reply to the amended part of the plaint, if possible, can also be used as defence to defeat original relief claimed in the suit. If bifurcation of the pleadings is not possible, then the deletion of consequential part of the amended pleadings cannot be ordered.

6. In the present case, I was taken through each and every paragraphs of the written statement filed by defendant No.4. Each defence can be justified on the ground that the said defence is material to defeat the claim of the plaintiff so far as possession is concerned. Eventually, the same defence can also be used to defeat original claim made or relief sought in the plaint. In this view of the matter, considering

peculiar facts of this case, no exception can be allowed to be taken. Considered from this angle, no infirmity in the impugned order could be noticed. The view taken by the Court below is a reasonable and possible view. This Court not being a court of appeal is not expected to substitute its own view.

7. In the result, petition is dismissed. Rule stands discharged with no order as to costs.

(V.C. DAGA, J.)